

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	

**REPLY COMMENTS OF THE
OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION**

The Office of Advocacy of the U. S. Small Business Administration (“Advocacy”) submits these reply comments to the Federal Communications Commission (“FCC” or “Commission”) regarding the Notice of Proposed Rulemaking (“NPRM”) in the above-referenced dockets.¹ The FCC seeks comment on several proposals to reform the universal service fund (“USF”).² Advocacy requests that the Commission further analyze the economic impact of adopting a reverse auction approach for distributing funds on small entities, and investigate how a numbers-based approach may reduce some of the administrative burdens associated with USF reporting for small carriers.

Introduction and Summary

Advocacy commends the Commission for its dedication to reforming the current universal service regime. A healthy universal service fund is necessary to implement Congress’ goals of providing affordable telecommunications services to

¹ See *Notice of Proposed Rulemaking*, WC Dkt. No. 05-337 (rel. January 29, 2008) [hereinafter, NPRM].

² *Id.*

all regions of the United States while promoting competition under the Telecommunications Act of 1996 (“The Act” or “Telecom Act”).³ Section 254(b) of the Act directs the Joint Board to establish USF policies that are “specific, predictable and sufficient federal and state universal service mechanisms.”⁴ Additionally, Section 254(b) requires that “quality services” be provided at “just and reasonable rates.”⁵ The Commission’s focus on upholding the intent of Section 254(b) is essential to strengthening the U.S. telecommunications market.

Problems exist with both the disbursement and collection of universal service funding. In recent years, the current universal service policies have led to disproportionate growth in the fund, which has undermined its long-term sustainability.⁶ Additionally, small entities have expressed the need to reduce the current administrative burdens associated with assessing contributions to the fund. These problems with fund distributions and contributions have led industry experts to urge the FCC to reform the universal service program to make the high-cost universal support mechanisms efficient and reliable.

In response to the call for reform, the FCC directed the Joint Board to review certain components of the process and to provide recommendations on how the Commission could continue to fulfill its historical commitment to ensure that consumers in all regions of the United States can access quality telecommunications

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁴ 47 U.S.C. § 254(b)(1).

⁵ 47 U.S.C. § 254(b)(3).

⁶ NPRM, *supra* note 1 at 2.

services at an affordable price.⁷ It is important to note that like traditional telephony, broadband connectivity has become an increasingly important telecommunications service, and the Joint Board has also reviewed how to provide customers in unserved areas with access to this advanced technology.⁸ Congress and the Administration have also worked to craft policies that would assist in the deployment of broadband and increase the competitiveness of small businesses in the U.S. telecommunications industry.⁹ Hence, restructuring the universal service fund to support broadband deployment to rural and low-income areas will not only fulfill Congress' intent under Section 254 of the Act, but will also benefit the small businesses dedicated to serving these areas.

In order to assist the Commission in understanding the economic impact that its proposed rules may have specifically on small entities, Advocacy has reviewed the initial regulatory flexibility analysis (IRFA), solicited input from representatives within the telecommunications industry, and analyzed the Commission's proposals. Based on the results of this review, Advocacy requests that the FCC clarify its economic impact analysis in the IRFA for this rulemaking and further investigate the impact of reverse auctions on small entities. In

⁷ See, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, 17 FCC Rcd 22642 (2002).

⁸ See, e.g., *FCC: strategic goals: broadband*, available at: <http://www.fcc.gov/broadband/> (stating that "All Americans should have affordable access to robust and reliable broadband products and services. Regulatory policies must promote technological neutrality, competition, investment, and innovation to ensure that broadband service providers have sufficient incentive to develop and offer such products and services").

⁹ See, *Promoting Innovation and Competitiveness: President Bush's Technology Agenda* (2004), available at: <http://www.whitehouse.gov/infocus/technology/> (explaining how the President in 2004 called for "universal, affordable access to broadband technology by the year 2007").

addition, we recommend that the Commission continue to shape the Joint Board's three-fund approach and support a numbers-based methodology for universal service contributions. Advocacy respectfully submits this reply comment to explain our recommendations in support of the FCC's universal service reform efforts.

1. Advocacy Background

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the Small Business Administration ("SBA"), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. Part of our role under the Regulatory Flexibility Act ("RFA") is to assist agencies in understanding how regulations may impact small businesses, and to ensure that the voice of small businesses is not lost within the regulatory process.¹⁰ Congress crafted the RFA to ensure that, while accomplishing their intended purposes, regulations did not unduly inhibit the ability of small entities to compete, innovate, or to comply with the regulation.¹¹

On August 13, 2002, President George W. Bush signed Executive Order 13272 that highlights the President's goal of giving small business owners a voice in the complex and confusing federal regulatory process by directing the Office of Advocacy to work closely with the agencies to ensure that the agencies properly consider the impact of their regulations on small entities.

¹⁰ Pub. No. 96-354, 94 Stat. 1164 (1980).

¹¹ Pub. L. 96-354, Findings and Purposes, Sec. 2 (a)(4)-(5), 126 Cong. Rec. S299 (1980).

2. The FCC Should Clarify Its Regulatory Flexibility Analysis in its Universal Service Rulemaking

The FCC notes in its NPRM that a number of small businesses will be affected by changes to the Universal Service Regime.¹² According to the Commission's IRFA; these small businesses include incumbent local exchange carriers (LECs), competitive LECs, competitive access providers, cellular service providers, personal communications providers, satellite service providers, and other telecommunications service providers.¹³ Under the RFA, the Commission's IRFA must contain a detailed economic analysis of how the rule may impact small entities as well as a description of significant alternatives that may minimize any negative economic burden that a given rule may impose.¹⁴ Because the Commission's new rules may impose an economic burden on small telecommunications companies, it is critical that the IRFA properly analyze this potential impact and propose significant alternatives to mitigate the burden. Analyzing the burden for this proposed rule is particularly important given its effect on a wide array of small telecommunications carriers and the importance of universal service reform.¹⁵ Therefore, Advocacy recommends that the FCC further examine and clarify the following:

- *How the FCC's reverse auctions proposal may impact small incumbent and wireless carriers that wish to serve as eligible telecommunications carriers (ETCs) in the market for rural phone services.* The

¹² NPRM, *supra* note 1.

¹³ NPRM, *supra* note 1, at 25-27.

¹⁴ 5 U.S.C. § 603.

¹⁵ NPRM, *supra* note 1.

Commission would benefit from analyzing how reverse auctions have worked in other industries to better understand how the process will affect smaller carriers and competition in the market for the provision of rural phone service. Additionally, the implementation of a test market for reverse auctions may assist the FCC in determining how reverse auctions would work in the telecommunications industry.

- *How the elimination of the identical support rule will economically impact small telecommunications carriers.* Advocacy believes that the FCC's final rule would benefit from a detailed economic analysis of how the elimination of identical support will affect small providers of telecommunications services.

3. The FCC Should Further Examine the Economic Impact of Reverse Auctions on Small Telecommunications Carriers

Based on available procurement data and the concerns of small businesses, Advocacy encourages the Commission to further study reverse auctions to assess their impact on small entities and to consider less burdensome alternatives. One such alternative may be the development of a test area to assist the FCC in assessing how small carriers may be affected by this type of auction system. Strengthening the rule in this way may fulfill the Telecom Act's universal service goals while minimizing the economic impact on small telecommunications companies.

4. The FCC Should Further Examine a Numbers-Based Approach to USF Contribution Reform

Small entities have also expressed concern over the FCC's current contribution methodology for universal service funding.¹⁶ On August 3, 2006, Advocacy held a roundtable to discuss the impact of the FCC's proposed rules, including changes to the USF contribution methodology. At this roundtable, the participants supported a numbers-based approach to assessing USF contributions. A numbers-based system would allow interstate telecommunications providers to contribute to the fund based on the total number of telephone numbers used by the provider. Small entities believe that this system would ease the administrative burdens associated with USF reporting by reducing paperwork and clarifying uncertainty over what constitutes interstate revenue.¹⁷ The reduction in the above-mentioned administrative costs will assist in minimizing the economic burden on the contribution side, while increasing predictability for small entities as well.¹⁸

5. Conclusion

Advocacy urges the FCC to consider the comments from the petitioners and other small businesses on how the proposed reforms to the universal service program will impact small entities. The steps taken to reduce the waste in the high cost fund and provide support so that rural and low income areas can receive access to advanced technology will benefit the public interest and support the Telecom

¹⁶ Small entities contacted Advocacy in 2006 and 2008 to express their support for a numbers-based contribution methodology. Some of these small businesses have joined the USF By the Numbers Coalition, an organization comprised of small and large businesses dedicated to reforming the collection mechanism for the universal service fund.

¹⁷ See, *In the Matter of Universal Service Contribution Methodology*, Comments of the Office of Advocacy, U.S. Small Business Administration (WC Docket No. 06-122) (August 8, 2006).

¹⁸ *Id.*

Act's universal service policy goals. Advocacy recommends that the Commission conduct the economic analyses needed to assess how the final rules may impact small telecommunications carriers and the U.S. market in general.

The Office of Advocacy is available to assist the Commission in its outreach to small business or in its consideration of the impact of this proposal on them. For additional information or assistance, please contact me or Cheryl Johns of my staff at (202) 205-6949 or cheryl.johns@sba.gov.

Respectfully submitted,

/s/ _____
Thomas M. Sullivan
Chief Counsel for Advocacy

/s/ _____
Cheryl M. Johns
Assistant Chief Counsel for
Telecommunications

Office of Advocacy
U.S. Small Business Administration
409 3rd Street, S.W.
Suite 7800
Washington, DC 20416

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Office of Advocacy
Comment
U.S. Small Business Administration
05-337

WC Dkt. No.

cc:

Honorable Kevin J. Martin, Chairman
Honorable Michael J. Copps, Commissioner
Honorable Jonathan S. Adelstein, Commissioner
Honorable Deborah Taylor Tate, Commissioner
Honorable Robert M. McDowell, Commissioner
Honorable Susan Dudley, Administrator, Office of Information and Regulatory
Affairs, OMB

via electronic filing

Certificate of Service

I, Cheryl M. Johns, an attorney with the Office of Advocacy, U.S. Small Business Administration, certify that I have, on this May 19, 2008, caused to be mailed, first-class, postage prepaid, a copy of the foregoing Comments to the following:

/s/ _____
Cheryl M. Johns

Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Room 8- B20
Washington, DC 20554

Honorable Robert M. McDowell
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Room 8-C302
Washington, DC 20554

Honorable Michael J. Copps
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Room 8-B115
Washington, DC 20554

Qualex International Portals II
445 12th Street, S.W.
Room CY-B402
Washington, DC 20554

Honorable Jonathan S. Adelstein
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Room 8-A302
Washington, DC 20554

Honorable Susan Dudley,
Administrator
Office of Information and Regulatory
Affairs
Office of Management and Budget
725 17th Street, N.W.
Washington, DC 20503

Honorable Deborah Taylor Tate
Commissioner
Federal Communications
Commission
445 12th Street, S.W.
Room 8-A204
Washington, DC 20554